IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1098 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT ELECTRICITY BOARD & 1 - Petitioner(s)

Versus

MAYUR CEMENT PIPE GRAMODYOG - Respondent(s)

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Appearance :

MR DEEPAK DAVE FOR MR.AD OZA for Petitioner(s) : 1 - 2.
NOTICE SERVED BY DS for Respondent(s) : 1,
MR PV NANAVATI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/12/2005

ORAL JUDGMENT

1. In this petition under Article 227 of the Constitution of India, the petitioners – Electricity Company has challenged the legality and validity of the order passed by the learned Civil Judge (SD),

Gondal dated 25.1.1995 passed below Exh.5 passed in Special Civil Suit No.14 of 1995. The petitioners have also prayed for an appropriate writ, direction or order restraining the learned Civil Judge (SD), Gondal to proceed with and adjudicate upon Special Civil Suit No.14 of 1995 as the Civil Court has no jurisdiction being impliedly barred under Section-9 of the Civil Procedure Code.

2. It appears from the record that the respondent was served with supplementary bill for an amount of Rs.82,009.43 ps for electricity theft and electricity supply of the respondent was disconnected. It also appears from the record that the petitioner preferred Special Civil Suit No.43 of 1994 before the learned Civil Judge (SD), Gondal for recovery of the aforesaid amount. It appears that in the said suit respondent appeared and thereafter immediately the respondent preferred Special Civil Suit No.14 of 1995 praying for reconnection of his electricity supply and quashing and setting aside the supplementary bill. It is the contention on behalf of the petitioners that bill dated 27.10.1993 came to be

challenged by way of aforesaid Special Civil Suit No.14 of 1995 on 25.1.1995 suppressing the fact that the petitioners had filed Special Civil Suit No.43 of 1994. In the said suit viz. Special Civil Suit No.14 of 1995, the respondent – original plaintiff submitted an application below Exh.5 for temporary injunction and the learned Civil Judge (SD), Gondal has passed the following order.

> “The defendants are hereby restrained from disconnecting electric supply of the plaintiff and if the electric supply is already disconnected, the defendants are hereby directed to forthwith reconnect the electricity supply of the plaintiff on condition that the plaintiff deposits with the Board 20 % of the suit bill Mark-3/6 upto 2.2.1995. The plaintiff is required to pay the reconnection charges as per the rules. If the plaintiff fails to deposit 20 % amount before 2.2.`995, it is open for the defendants to disconnect the electricity supply of the plaintiff. This order is

operative upto 10.02.1995.”

3. Being aggrieved and dissatisfied with the same, the petitioners have preferred the present special civil application under Article 227 of the Constitution of India for the aforesaid relief. Shri Deepak Dave, learned advocate appearing on behalf of the petitioners has relied upon the decision of the Hon'ble Supreme Court in case of PUNJAB STATE ELECTRICITY BOARD AND ANOTHER VS. ASHWINI KUMAR, reported in (1997) 5 SCC 120 in support of his submission that the jurisdiction of the Civil Court challenging the supplementary bill without resorting to the appellate forum is barred. He has also further submitted that even assuming for the sake of arguments that the Civil Court has jurisdiction by way of injunction, the learned trial court ought not to have passed the order of reconnection of electricity supply on payment of 20 % of the suit bill. Therefore, it is requested to allow the present special civil application and dismiss the said Special Civil Suit No.14 of 1995 by holding that the Civil Court has no jurisdiction.

4. Though served, nobody appears on behalf of the respondent. It is not in dispute that the respondent came to be served with the supplementary bill for theft of electricity supply for an amount of Rs.82,009.43 ps on 27.10.1993 and for non payment of the same, even the petitioners also filed Special Civil Suit No.43 of 1994. After period of one and half years, and after filing of the aforesaid Special Civil Suit No.43 of 1993, the respondent filed Special Civil Suit No.14 of 1995 praying for reconnection of the electricity supply and quashing and setting aside the supplementary bill. It is required to be noted that against the supplementary bill, as such, the respondent is required to approach before the appellate authority of the Gujarat Electricity Board which is statutory one. An identical question is considered by the Hon'ble Supreme Court in case of PUNJAB STATE ELECTRICITY BOARD AND ANOTHER VS. ASHWINI KUMAR (Supra) and the Hon'ble Supreme Court dealing with and considering similar set of facts and circumstances, has held that the suit filed by the respondent seeking permanent

injunction restraining the Board from collecting and recovering the amount demanded without first availing remedy provided under the Electricity (Supply) Act and instructions issued by the Board cannot be entertained by the Civil Court. It is also held by the Hon'ble Supreme Court that jurisdiction of Civil Court is barred by necessary implication when the remedy by way of departmental appeal being available. Considering the judgment of the Hon'ble Supreme Court in case of PUNJAB STATE ELECTRICITY BOARD AND ANOTHER VS. ASHWINI KUMAR, it is to be held that the learned Civil Judge (SD) has no jurisdiction to entertain the suit against the supplementary bill without the respondent herein – original plaintiff being exhausted the statutory appeal challenging the supplementary bill before the appellate authority. Even otherwise, considering the facts and circumstances of the case and considering the judgment of this Court in case KIRAN INDUSTRIES, MEHSANA V. GUJARAT ELECTRICITY BOARD, BARODA AND ANOTHER reported in 1995 (2) GLH 1, the trial court was not justified in granting injunction for reconnecting the electricity supply. Under the

circumstances also, even the impugned order passed below Exh.5 is required to be quashed and set aside.

5. For the reasons stated above, the petition succeeds. The impugned order passed by the learned Civil Judge (SD), Gondal dated 25.1.1995 passed in Special Civil Suit No.14 of 1995 is hereby quashed and set aside. It is also held that aforesaid Special Civil Suit No.14 of 1995 filed by the respondent herein – original plaintiff challenging the supplementary bill and praying for injunction is barred and the learned trial court has no jurisdiction to entertain the suit. The learned Civil Judge (SD), Gondal is directed to pass further consequential of dismissal of the suit considering the present order within a period of four weeks from the date of receipt of this order.

6. Rule is made absolute to the aforesaid extent. However, there shall be no order as to costs.

[M.R.Shah, J.]

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